

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRENNAN CAIN,

Plaintiff,

v.

Case No. 18-12421
Honorable Victoria A. Roberts

UNIVERSITY OF MICHIGAN, et al.,

Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS [ECF No. 4]
AND DISMISSING THE COMPLAINT WITHOUT PREJUDICE

Plaintiff Brennan Cain filed this case against the University of Michigan and the University of Michigan-Dearborn ("Defendants"), alleging three claims: (1) failure to accommodate in violation of the Americans with Disabilities Act ("ADA"); (2) disability discrimination in violation of the ADA; and (3) retaliation in violation of the Family and Medical Leave Act ("FMLA").

Defendants move to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(1), arguing that Cain's claims are barred by sovereign immunity under the Eleventh Amendment to the United States Constitution. The motion is fully briefed.

Count I and II of the complaint are claims for money damages under Title I of the ADA; Cain does not seek prospective injunctive relief against any state official.

In *Trustees of the Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001), "the U.S. Supreme Court held that the Eleventh Amendment prohibits state employees from suing their employers for money damages under Title I of the Americans with Disabilities Act." See *Nihiser v. Ohio E.P.A.*, 269 F.3d 626, 627 (6th Cir. 2001). "As a state employee

suing [her] employer under Title I, [Cain's] Americans with Disabilities Act claim[s] [are] governed by *Garrett* and must be dismissed. See *id.* at 627-28.

Cain's ADA claims are **DISMISSED WITHOUT PREJUDICE**. See *Dillon-Barber v. Regents of Univ. of Mich.*, 51 Fed. Appx. 946, 949 (6th Cir. 2002) (citing *Freeman v. Oakland Unified Sch. Dist.*, 179 F.3d 846, 847 (9th Cir. 1999) (holding that an action barred by the 11th Amendment must be dismissed without prejudice)).

Cain does not respond to Defendants' arguments regarding her FMLA claim. Therefore, the Court finds Cain abandoned that claim.

Cain's FMLA retaliation claims is **DISMISSED WITHOUT PREJUDICE**.

In the conclusion of her response, Cain asks to file an amended complaint in the alternative, or in addition, to denying Defendants' motion. Plaintiff's request is denied. See *Kuyat v. BioMimetic Therapeutics, Inc.*, 747 F.3d 435, 444 (6th Cir. 2014) ("Both because the plaintiffs did not present an adequate motion and because they did not attach a copy of their amended complaint, the district court did not abuse its discretion in refusing to allow the plaintiffs to amend their complaint based on the final sentence of the plaintiffs' memorandum in opposition.").

Defendants' motion to dismiss [ECF No. 4] is **GRANTED**. The complaint is **DISMISSED WITHOUT PREJUDICE**.

IT IS ORDERED.

s/ Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: November 8, 2018